

114TH CONGRESS  
1ST SESSION

# H. R. 2570

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IN THE SENATE OF THE UNITED STATES

JUNE 18, 2015

Received; read twice and referred to the Committee on Finance

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## AN ACT

To amend title XVIII of the Social Security Act with respect to the treatment of patient encounters in ambulatory surgical centers in determining meaningful EHR use, establish a demonstration program requiring the utilization of Value-Based Insurance Design to demonstrate that reducing the copayments or coinsurance charged to Medicare beneficiaries for selected high-value prescription medications and clinical services can increase their utilization and ultimately improve clinical outcomes and lower health care expenditures, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Strengthening Medi-  
3 care Advantage through Innovation and Transparency for  
4 Seniors Act of 2015”.

**5 SEC. 2. TREATMENT OF PATIENT ENCOUNTERS IN AMBULA-****6 TORY SURGICAL CENTERS IN DETERMINING  
7 MEANINGFUL EHR USE.**

8 Section 1848(o)(2) of the Social Security Act (42  
9 U.S.C. 1395w-4(o)(2)) is amended by adding at the end  
10 of the following new subparagraph:

11                   **“(D) TREATMENT OF PATIENT ENCOUN-  
12 TERS AT AMBULATORY SURGICAL CENTERS.—**

13                   “(i) IN GENERAL.—Subject to clause  
14 (ii), for a payment year after 2015 any pa-  
15 tient encounter of an eligible professional  
16 occurring at an ambulatory surgical center  
17 (described in section 1833(i)(1)(A)) shall  
18 not be treated as a patient encounter in  
19 determining whether an eligible profes-  
20 sional qualifies as a meaningful EHR user.

21 Notwithstanding any other provision of  
22 law, the Secretary may implement this  
23 clause by program instruction or otherwise.

24                   “(ii) SUNSET.—Clause (i) shall no  
25 longer apply as of the first payment year  
26 that begins more than 3 years after the

1 date the Secretary determines, through no-  
2 tice and comment rulemaking, that cer-  
3 tified EHR technology is applicable to the  
4 ambulatory surgical center setting.”.

5 **SEC. 3. VALUE-BASED INSURANCE DESIGN DEMONSTRA-**  
6 **TION PROGRAM.**

7 (a) IN GENERAL.—The Secretary of Health and  
8 Human Services (in this section referred to as the “Sec-  
9 retary”) shall establish a 3-year demonstration program  
10 to test the use of value-based insurance design methodolo-  
11 gies (as defined in subsection (c)(1)) under eligible Medi-  
12 care Advantage plans offered by Medicare Advantage or-  
13 ganizations under part C of title XVIII of the Social Secu-  
14 rity Act (42 U.S.C. 1395w–21 et seq.). The Secretary may  
15 extend the program to a duration of 4 or 5 years, as deter-  
16 mined necessary by the Secretary in coordination with the  
17 Centers for Medicare and Medicaid Innovation.

18 (b) DEMONSTRATION PROGRAM DESIGN.—

19 (1) SELECTION OF MEDICARE ADVANTAGE  
20 SITES AND ELIGIBLE MEDICARE ADVANTAGE  
21 PLANS.—Not later than 2 years after the date of the  
22 enactment of this Act, the Secretary shall—

23 (A) select at least two Medicare Advantage  
24 sites with respect to which to conduct the dem-  
25 onstration program under this section; and

(B) approve eligible Medicare Advantage plans to participate in such demonstration program.

4 In selecting Medicare Advantage sites under sub-  
5 paragraph (A), the Secretary shall take into account  
6 area differences as well as the availability of health  
7 maintenance organization plans and preferred pro-  
8 vider organization plans offered in such sites.

(A) The plan is an Medicare Advantage regional plan (as defined in paragraph (4) of section 1859(b) of such Act (42 U.S.C. 1395w–28(b))) or Medicare Advantage local plan (as defined in paragraph (5) of such section) offered in the Medicare Advantage region selected under paragraph (1)(A).

1 (B) The plan has—

(i)(I) a quality rating under section 1853(o) of such Act (42 U.S.C. 1395w-23(o)) of 4 stars or higher based on the most recent data available for such year, or (II) in the case of a specialized Medicare Advantage plan for special needs individuals, as defined in section 1859(b)(6)(A) of such Act (42 U.S.C. 1395w-28(b)(6)(A)), a quality rating under section 1853(o) of such Act (42 U.S.C. 1395w-23(o)) equal to or higher than the national average for special needs plans (excluding Institutional-Special needs plans) based on the most recent data available for such year; and

1 participate under the demonstration program during  
2 a plan year for which the plan is so selected—

3 (A) notification that the plan is participating in such demonstration program;

5 (B) background information on the demonstration program;

7 (C) clinical data derived from the studies resulting from the demonstration program; and

9 (D) notification of the potential benefits  
10 that the individual will receive, and of the other  
11 potential impacts that the individual will experience,  
12 on account of the participation of the plan  
13 in the demonstration program.

14 (c) VALUE-BASED INSURANCE DESIGN METHODOLOGIES.—

16 (1) DEFINITION.—For purposes of this section,  
17 the term “value-based insurance design methodology” means a methodology for identifying specific  
18 prescription medications, and clinical services that  
19 are payable under title XVIII of the Social Security  
20 Act, for which the reduction of copayments, coinsurance,  
21 or both, would improve the management of  
22 specific chronic clinical conditions because of the  
23 high value and effectiveness of such medications and

1 services for such specific chronic clinical conditions,  
2 as approved by the Secretary.

3 (2) USE OF METHODOLOGIES TO REDUCE CO-  
4 PAYMENTS AND COINSURANCE.—A Medicare Advan-  
5 tage organization offering an eligible Medicare Ad-  
6 vantage plan approved to participate under the dem-  
7 onstration program, for each plan year for which the  
8 plan is so selected and using value-based insurance  
9 design methodologies—

10 (A) shall identify each prescription medica-  
11 tion and clinical service covered under such  
12 plan for which the plan proposes to reduce or  
13 eliminate the copayment or coinsurance, with  
14 respect to the management of specific chronic  
15 clinical conditions (as specified by the Sec-  
16 tary) of Medicare Advantage eligible individ-  
17 uals (as defined in section 1851(a)(3) of the  
18 Social Security Act (42 U.S.C. 1395w–  
19 21(a)(3))) enrolled under such plans, for such  
20 plan year;

21 (B) may, for such plan year, reduce or  
22 eliminate copayments, coinsurance, or both for  
23 such prescription medication and clinical serv-  
24 ices so identified with respect to the manage-  
25 ment of such conditions of such individuals—

(i) if such reduction or elimination is evidence-based and for the purpose of encouraging such individuals in such plan to use such prescription medications and clinical services (such as preventive care, primary care, specialty visits, diagnostic tests, procedures, and durable medical equipment) with respect to such conditions; and

(ii) for the purpose of encouraging such individuals in such plan to use health care providers that such organization has identified with respect to such plan year as being high value providers; and

(C) if a reduction or elimination is applied pursuant to subparagraph (B), with respect to such medication and clinical services, shall, for such plan year, count toward the deductible applicable to such individual under such plan amounts that would have been payable by the individual as copayment or coinsurance for such medication and services if the reduction or elimination had not been applied.

(3) PROHIBITION OF INCREASES OF COPAYMENTS AND COINSURANCE.—In no case may any Medicare Advantage plan participating in the dem-

1       onstration program increase, for any plan year for  
2       which the plan is so participating, the amount of co-  
3       payments or coinsurance for any item or service cov-  
4       ered under such plan for purposes of discouraging  
5       the use of such item or service.

6       (d) REPORT ON IMPLEMENTATION.—

7               (1) IN GENERAL.—Not later than 1 year after  
8       the date on which the demonstration program under  
9       this section begins under subsection (b)(2), the Sec-  
10      etary shall submit to Congress a report on the sta-  
11      tus of the implementation of the demonstration pro-  
12      gram.

13               (2) ELEMENTS.—The report required by para-  
14      graph (1) shall, with respect to eligible Medicare Ad-  
15      vantage plans participating in the demonstration  
16      program for the first plan year of such program, in-  
17      clude the following:

18                       (A) A list of each medication and service  
19       identified pursuant to subsection (c)(2)(A) for  
20       such plan with respect to such plan year.

21                       (B) For each such medication or service so  
22       identified, the amount of the copayment or co-  
23       insurance required under such plan with respect  
24       to such plan year for such medication or service

1           and the amount of the reduction of such copay-  
2       ment or coinsurance from a previous plan year.

3           (C) For each provider identified pursuant  
4       to subsection (c)(2)(B)(ii) for such plan with  
5       respect to such plan year, a statement of the  
6       amount of the copayment or coinsurance re-  
7       quired under such plan with respect to such  
8       plan year and the amount of the reduction of  
9       such copayment or coinsurance from the pre-  
10      vious plan year.

11           (e) REVIEW AND ASSESSMENT OF UTILIZATION OF  
12      VALUE-BASED INSURANCE DESIGN METHODOLOGIES.—

13           (1) IN GENERAL.—The Secretary shall enter  
14       into a contract or agreement with an independent  
15       entity to review and assess the implementation of  
16       the demonstration program under this section. The  
17       review and assessment shall include the following:

18           (A) An assessment of the utilization of  
19       value-based insurance design methodologies by  
20       Medicare Advantage plans participating under  
21       such program.

22           (B) An analysis of whether reducing or  
23       eliminating the copayment or coinsurance for  
24       each medication and clinical service identified  
25       pursuant to subsection (c)(2)(A) resulted in in-

1           increased adherence to medication regimens, in-  
2           creased service utilization, improvement in qual-  
3           ity metrics, better health outcomes, and en-  
4           hanced beneficiary experience.

5           (C) An analysis of the extent to which  
6           costs to Medicare Advantage plans under part  
7           C of title XVIII of the Social Security Act par-  
8           ticipating in the demonstration program is less  
9           than costs to Medicare Advantage plans under  
10          such part that are not participating in the dem-  
11          onstration program.

12          (D) An analysis of whether reducing or  
13          eliminating the copayment or coinsurance for  
14          providers identified pursuant to subsection  
15          (c)(2)(B)(ii) resulted in improvement in quality  
16          metrics, better health outcomes, and enhanced  
17          beneficiary experience.

18          (E) An analysis, for each provider so iden-  
19          tified, the extent to which costs to Medicare Ad-  
20          vantage plans under part C of title XVIII of the  
21          Social Security Act participating in the dem-  
22          onstration program is less than costs to Medi-  
23          care Advantage plans under such part that are  
24          not participating in the demonstration program.

(F) Such other matters as the Secretary  
considers appropriate.

19 (A) A description of the results of the re-  
20 view and assessment included in the report sub-  
21 mitted pursuant to paragraph (2).

1 vantage plans under part C of title XVIII of the  
2 Social Security Act so as to reduce copayments  
3 and coinsurance under such plans paid by  
4 Medicare beneficiaries for high-value prescrip-  
5 tion medications and clinical services for which  
6 coverage is provided under such plans and to  
7 otherwise improve the quality of health care  
8 provided under such plans.

9 (4) OVERSIGHT REPORT.—Not later than 3  
10 years after the date of the enactment of this Act, the  
11 Comptroller General of the United States shall sub-  
12 mit to Congress a report on the demonstration pro-  
13 gram that includes an assessment, with respect to  
14 individuals enrolled under Medicare Advantage plans  
15 approved to participate under the demonstration  
16 program, of the impact that the age, co-morbidities,  
17 and geographic regions of such individuals had upon  
18 the implementation of the demonstration program by  
19 the plans with respect to such individuals.

20 (f) SAVINGS.—In no case may any reduction in bene-  
21 ficiary copayments or coinsurance resulting from the im-  
22 plementation of the demonstration program under this  
23 section result in expenditures under parts A, B, and D  
24 of the title XVIII of the Social Security Act that are great-

1 er than such expenditures without application of this sec-  
2 tion.

3 (g) EXPANSION OF DEMONSTRATION PROGRAM.—  
4 Taking into account the review and assessment conducted  
5 under subsection (e), the Secretary may, through notice  
6 and comment rulemaking, expand (including implemen-  
7 tation on a nationwide basis) the duration and scope of the  
8 demonstration program under title XVIII of the Social Se-  
9 curity Act, other than under the original medicare fee-for-  
10 service program under parts A and B of such title, to the  
11 extent determined appropriate by the Secretary, if the re-  
12 quirements of paragraphs (1), (2), and (3) of subsection  
13 (c) of section 1115A of the Social Security Act (42 U.S.C.  
14 1315a), as applied to the testing of a model under sub-  
15 section (b) of such section, applied to the demonstration  
16 under this section.

17 (h) WAIVER AUTHORITY.—The Secretary may waive  
18 such provisions of titles XI and XVIII of the Social Secu-  
19 rity Act as may be necessary to carry out the demonstra-  
20 tion program under this section.

21 (i) IMPLEMENTATION FUNDING.—For purposes of  
22 carrying out the demonstration program under this sec-  
23 tion, the Secretary shall provide for the transfer from the  
24 Federal Hospital Insurance Trust Fund under section  
25 1817 of the Social Security Act (42 U.S.C. 1395i) and

1 the Federal Supplementary Insurance Trust Fund under  
2 section 1841 of the Social Security Act (42 U.S.C. 1395t),  
3 including the Medicare Prescription Drug Account in such  
4 Trust Fund, in such proportion as determined appropriate  
5 by the Secretary, of such sums as may be necessary.

6 **SEC. 4. TREATMENT OF INFUSION DRUGS FURNISHED**

7 **THROUGH DURABLE MEDICAL EQUIPMENT.**

8 Section 1842(o)(1) of the Social Security Act (42  
9 U.S.C. 1395u(o)(1)) is amended—

10 (1) in subparagraph (C), by inserting “(and in-  
11 cluding a drug or biological described in subpara-  
12 graph (D)(i) furnished on or after January 1,  
13 2017)” after “2005”; and

14 (2) in subparagraph (D)—

15 (A) by striking “infusion drugs” and in-  
16 serting “infusion drugs or biologicals” each  
17 place it appears; and

18 (B) in clause (i)—

19 (i) by striking “2004” and inserting  
20 “2004, and before January 1, 2017”; and

21 (ii) by striking “for such drug”.

1   **SEC. 5. SENSE OF CONGRESS REGARDING THE IMPLEMEN-**  
2                   **TATION AND DISTRIBUTION OF QUALITY IN-**  
3                   **CENTIVE PAYMENTS TO MEDICARE ADVAN-**  
4                   **TAGE PLANS.**

5       It is the sense of Congress that—

6               (1) the Secretary of Health and Human Serv-  
7       ices has incorrectly interpreted subsection (n) of sec-  
8       tion 1853 of the Social Security Act (42 U.S.C.  
9       1395w-23) as prohibiting the provision of any Medi-  
10      care quality incentive payments under subsection (o)  
11      of such section with respect to Medicare Advantage  
12      plans that exceed the payment benchmark cap under  
13      such subsection (n) for the area served by such  
14      plans; and

15              (2) the Secretary should immediately apply  
16      quality incentive payments under such subsection (o)  
17      with respect to such Medicare Advantage plans with-  
18      out regard to the limits set forth in such subsection  
19      (n).

20   **SEC. 6. MEDICARE IMPROVEMENT FUND.**

21       Section 1898(b)(1) of the Social Security Act (42  
22      U.S.C. 1395iii(b)(1)) is amended by striking “during and  
23      after fiscal year 2020, \$0” and inserting “after fiscal year  
24      2020, \$220,000,000”.

**1 SEC. 7. NON-INCLUSION OF DME INFUSION DRUGS UNDER**  
**2 DME COMPETITIVE ACQUISITION PROGRAMS.**

3 (a) IN GENERAL.—Section 1847(a)(2)(A) of the So-  
4 cial Security Act (42 U.S.C. 1395w–3(a)(2)(A)) is amend-  
5 ed—

(1) by striking “and excluding” and inserting “,  
excluding”; and

(2) by inserting before the period at the end the following: “, and excluding drugs and biologicals described in section 1842(o)(1)(D)”.

11 (b) CONFORMING AMENDMENT.—Section  
12 1842(o)(1)(D)(ii) of the Social Security Act (42 U.S.C.  
13 1395u(o)(1)(D)(ii)) is amended by striking “2007” and  
14 inserting “2007, and before the date of the enactment of  
15 the Strengthening Medicare Advantage through Innova-  
16 tion and Transparency for Seniors Act of 2015”.

Passed the House of Representatives June 17, 2015.

Attest: KAREN L. HAAS,  
*Clerk.*